

EXHIBIT D

to the Declaration of
Lisa J. Cisneros in Support of
Plaintiffs' Opposition Briefs

REDACTED VERSION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE)
ANTITRUST LITIGATION)
) No. 11-CV-2509-LHK
THIS DOCUMENT RELATES TO:)
ALL ACTIONS.)

DEPOSITION OF: DONNA MORRIS

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

August 21, 2012

Reported by: Anne Torreano, CSR No. 10520

10:05:37 1 business e-mails?

10:05:38 2 A. My personal e-mail account?

10:05:41 3 Q. When you said you searched your e-mails, what
10:05:43 4 did you search? You searched e-mails that weren't on a
10:05:48 5 shared drive?

10:05:49 6 A. So all of my e-mails are just company
10:05:51 7 e-mails. All of them are recoverable. They're all
10:05:54 8 company e-mail.

10:05:55 9 Q. Okay. All right.

10:05:56 10 A. So they're on a backup.

10:05:57 11 Q. How did you search? What did you do?

10:05:59 12 A. So I searched by name and searched by -- I
10:06:05 13 have folders, so I was able to look in different
10:06:08 14 folders.

10:06:09 15 Q. Okay. So you looked in particular folders.

10:06:11 16 Did you have a folder about the agreement that
10:06:13 17 Adobe had with Apple?

10:06:14 18 A. No.

10:06:14 19 Q. How did you -- what kind of folders did you
10:06:17 20 look in to see whether there were relevant e-mails?

10:06:20 21 A. Just general talent folders. So each of the
10:06:24 22 functional areas I have a folder, so -- I also knew
10:06:28 23 there weren't too many e-mails that were related to the
10:06:30 24 situation, so it wasn't too difficult for me to figure
10:06:36 25 out what documents I had. So it wasn't like I knew

10:06:39 1 that there was all kinds of documents that I had to
10:06:41 2 search for.

10:06:42 3 Q. How did you know that there was a limited set
10:06:44 4 of e-mails related to this situation?

10:06:46 5 A. Because it was historical, you know, back to
10:06:49 6 when Bruce was CEO and discussions that he had had at
10:06:53 7 that point in time with Steve Jobs, and he made me
10:06:57 8 aware of it. And I think when an executive makes you
10:07:01 9 aware of something, you don't need to continue to have
10:07:03 10 discussions beyond that.

10:07:04 11 Q. What does that mean?

10:07:05 12 A. He was very specific about what we could and
10:07:08 13 could not do, and it was fair game in terms of our
10:07:13 14 ability to attract talent from Apple, and he just
10:07:19 15 specifically asked that we not call directly into
10:07:23 16 Apple, but certainly, if we met Apple employees along
10:07:27 17 the way or if Apple employees were qualified for
10:07:33 18 openings, we could certainly go ahead and recruit.

10:07:37 19 Q. And Mr. Chizen said that the rules regarding
10:07:41 20 what you can and cannot do with regard to Apple
10:07:44 21 employees was as a result of an agreement that he had
10:07:46 22 with Mr. Jobs?

10:07:47 23 A. I don't know if he used the term "agreement"
10:07:52 24 as opposed to it was an understanding or discussion
10:07:55 25 that he and Steve had had, Mr. Jobs had had.

10:07:58 1 Q. So he told you that he had an understanding
10:08:00 2 with Mr. Jobs and, as a result of that understanding,
10:08:02 3 he gave you guidelines on the types of things you can
10:08:05 4 do to recruit Apple employees; is that right?

10:08:07 5 A. I wouldn't say that he gave us guidelines, and
10:08:10 6 he may have had that discussion with someone else, but
10:08:13 7 at that point in time I didn't report directly in to
10:08:17 8 Bruce, and it was when I was senior director of
10:08:20 9 talent. And so at that point in time, it was really
10:08:24 10 Theresa Townsley who expressed what we should and
10:08:28 11 should not do specific to Apple.

10:08:29 12 Q. Did you have a communication directly with
10:08:31 13 Mr. Chizen about this?

10:08:33 14 A. I don't recall if we did have a direct
10:08:39 15 communication, written communication.

10:08:41 16 Q. Right.

10:08:41 17 A. You know, at one point in time, he spoke to me
10:08:45 18 very briefly about it.

10:08:46 19 Q. What did he say to you?

10:08:47 20 A. At that point in time, I think it was well
10:08:51 21 beyond -- at that point in time, I don't even know what
10:08:55 22 the date was. I was probably senior vice president of
10:08:58 23 global talent, and it was not related to Apple
10:09:01 24 whatsoever, and he was interested in knowing what our
10:09:08 25 hiring practices were specific to another company.

10:42:50 1 would constitute an objection on behalf of all the
10:42:54 2 defendants, and I think we've all agreed to that. Is
10:42:56 3 that right?

10:42:57 4 MR. CRAMER: That's fair.

10:42:57 5 MS. BROWN: Thank you.

10:42:58 6 BY MR. CRAMER:

10:42:58 7 Q. Who's the head of -- who was in charge of
10:43:03 8 compensation for Adobe in 2005?

10:43:05 9 A. In 2005 it would have been Ellen Swarthout.

10:43:10 10 Q. How do you spell her last name?

10:43:13 11 A. S-w-a-r-t-h-o-u-t.

10:43:16 12 Q. And at some point -- who had -- who had --
10:43:25 13 subsequent to 2005 who had that responsibility?

10:43:27 14 A. So Ellen left Adobe in approximately two
10:43:35 15 thousand -- I want to say late 2007 or perhaps it
10:43:40 16 was -- it was sometime in 2007 that Ellen left. And
10:43:46 17 then the responsibility changed to Debbie Streeter.

10:43:49 18 Q. How do you spell her last name?

10:43:51 19 A. S-t-r-e-e-t-e-r.

10:43:54 20 Q. And subsequent to that was there someone else
10:43:56 21 who replaced Ms. Streeter?

10:43:59 22 A. No, she is still in the role.

10:44:00 23 Q. And she currently reports to you?

10:44:01 24 A. That's correct.

10:44:02 25 Q. And in 2007 when you received your promotion,

10:44:05 1 did she report to you at that point?

10:44:06 2 A. No, at that point in time it was Ellen
10:44:09 3 Swarthout.

10:44:09 4 Q. It was Ellen. Okay. Thank you.

10:44:11 5 I believe you testified earlier that one
10:44:14 6 function of human resources at Adobe is recruiting
10:44:18 7 employees, employees or talent to fill positions at the
10:44:22 8 company?

10:44:22 9 A. That's correct.

10:44:22 10 Q. And another function of human resources at
10:44:25 11 Adobe is to help retain employees at the company?

10:44:28 12 A. We don't have like a function per se that's
10:44:33 13 called "retention," but certainly an overall
10:44:37 14 responsibility of human resources is to help retain
10:44:39 15 talent. That's right.

10:44:40 16 Q. Let's talk about recruiting for a bit.

10:44:43 17 Why is recruiting talent important for Adobe?

10:44:46 18 A. So our critical, most critical asset is
10:44:50 19 people. So we're really an IP-based company.

10:44:53 20 Q. "IP" is intellectual property?

10:44:56 21 A. Correct. So that's -- you know, ultimately
10:44:57 22 the only asset that we have as an organization is the
10:45:04 23 bright minds of individuals and technologists or
10:45:09 24 individuals who sell our products or market our
10:45:11 25 products.

10:45:11 1 Q. So it's important to Adobe to have --

10:45:14 2 A. It's critical.

10:45:15 3 Q. It's critical to Adobe to have the best talent
10:45:18 4 that you can have?

10:45:18 5 A. Correct.

10:45:20 6

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

10:47:39 24 Q. Let's talk about executive recruitment.

10:47:41 25 You said that at some point Adobe retained

11:22:45 1 Q. -- or another kind of way in which a company
11:22:47 2 might reach out to a passive candidate.

11:22:50 3 Is that fair? You can -- if you don't
11:22:52 4 understand the question, you can let me know, but I
11:22:54 5 just -- I'm going to use the word "cold call" as kind
11:22:58 6 of a shorthand for contacting passive candidates.

11:23:01 7 A. Okay.

11:23:01 8 MR. KIERNAN: And do you mean -- when you say
11:23:03 9 "passive candidate," someone who has no contact with
11:23:07 10 Adobe?

11:23:09 11 MR. CRAMER: I mean --

11:23:10 12 MR. KIERNAN: I just want to make sure we're
11:23:12 13 all using the same terminology here.

11:23:13 14 MR. CRAMER: That's fair.

11:23:14 15 I'm going to use "passive candidate" the same
11:23:16 16 way that Ms. Morris has used "passive candidate," that
11:23:19 17 is, someone who may not know that they want to work for
11:23:22 18 Adobe, someone who is not seeking out at the time a job
11:23:25 19 with Adobe.

11:23:26 20 Is that fair?

11:23:27 21 MR. KIERNAN: Okay. So excluding the employee
11:23:29 22 referral folks and new college -- I mean, I just want
11:23:35 23 to make sure that --

11:23:35 24 MR. CRAMER: Yes.

11:23:36 25 MR. KIERNAN: Okay.

11:23:36 1 MR. CRAMER: We're talking about the passive
11:23:37 2 candidate that Ms. Morris has been referring to.

11:23:39 3 BY MR. CRAMER:

11:23:39 4 Q. Is it fair to say that one way in which Adobe
11:23:42 5 employees learn about offers that might be available to
11:23:45 6 them from other companies is through cold-calling?

11:23:47 7 A. Offers?

11:23:50 8 Q. Offers, yeah, available offers, available
11:23:53 9 jobs?

11:23:54 10 Put it this way: One way in which employees
11:23:56 11 learn about jobs that might be available to them is
11:23:58 12 through cold-calling?

11:23:59 13 A. That is one of many ways.

11:24:04 14 Q. But it is one way in which employees gain
11:24:08 15 information about available -- positions that might be
11:24:11 16 available to them out there in the world?

11:24:12 17 A. One of many.

11:24:13 18 Q. Okay.

11:24:14 19 A. Likely not the most predictive.

11:24:16 20 Q. But it's one of the ways?

11:24:17 21 A. It's one of the ways.

11:24:19 22 Q. And it's one of the ways in which information
11:24:24 23 about available jobs is transmitted to employees; is
11:24:27 24 that right? Cold-calling is.

11:24:32 25 A. So cold-calling typically happens more as you

11:24:38 1 become more senior in your career. So I would say
11:24:42 2 the -- you know, I'm sort of making a generalization
11:24:45 3 here, but the more senior you become, the more likely
11:24:49 4 you have more, you know, cold calls that you receive.
11:24:53 5 When you're more junior, not as much.

11:24:58 6 Part of that is it's harder to find more
11:25:00 7 junior talent, and so I would say earlier in a person's
11:25:04 8 career they would likely find out more about job
11:25:06 9 opportunities through their friends, job postings,
11:25:12 10 different web sites, sites like Glassdoor, et cetera.

11:25:16 11 So there's lots of way for employees to find
11:25:19 12 out information about jobs.

11:25:19 13 Q. But more junior employees do get cold calls
11:25:23 14 from time to time?

11:25:23 15 A. Sure they do.

11:25:24 16 Q. And junior employees often post their
11:25:27 17 information on LinkedIn, for example; correct?

11:25:29 18 MR. KIERNAN: Objection. Calls for
11:25:29 19 speculation, vague and ambiguous.

11:25:31 20 BY MR. CRAMER:

11:25:31 21 Q. You're aware that employees that are not
11:25:33 22 senior post their information on LinkedIn, are you not?

11:25:36 23 A. Sure.

11:25:36 24 Q. Is it fair to say that Adobe employees who get
11:25:51 25 cold calls from competitors for talent sometimes share

11:25:56 1 that information with fellow employees?

11:25:58 2 MR. KIERNAN: Objection. Calls for
11:25:59 3 speculation, vague and ambiguous. Object to form.

11:26:02 4 BY MR. CRAMER:

11:26:02 5 Q. You can answer.

11:26:03 6 A. You know, I wouldn't know if they do or not.

11:26:07 7 Q. Have you ever heard that employees who have
11:26:11 8 gotten cold-called by a competitor for talent shared
11:26:15 9 that information with their fellow employees?

11:26:17 10 MR. KIERNAN: Objection. Lacks foundation,
11:26:20 11 form.

11:26:20 12 BY MR. CRAMER:

11:26:20 13 Q. Go ahead.

11:26:20 14 A. It's a more common practice in India than it
11:26:23 15 is here.

11:26:24 16 Q. What do you mean by that?

11:26:25 17 A. We're a very global company. In India they
11:26:28 18 tend to be much more open in terms of sharing
11:26:32 19 information. I'm making a generalization. But we do
11:26:34 20 not hear that same type of discussions that happen as
11:26:37 21 much. People are just not as open here in the U.S. as
11:26:40 22 they are in India, is our -- has been our situation in
11:26:45 23 terms of how much they share.

11:26:46 24 Q. Fair enough. Fair enough.

11:26:50 25 But you have heard, have you not, that

11:55:44 1 the intended audience for it, if Jeff just did it

11:55:48 2 actually for myself or if we ended up sending it to

11:55:52 3 someone else.

11:55:52 4 But clearly we continued to work on building

11:55:57 5 our internal capability of attracting talent. And I

11:56:02 6 think what -- the intent, once again, is -- you'd have

11:56:04 7 to speak more to Jeff -- is really doing an analysis of

11:56:08 8 what our attraction was specific to acquiring senior

11:56:14 9 talent.

11:56:14 10 Q. I'd like to just ask you a question on page --

11:56:18 11 the third page of the document, including the cover

11:56:20 12 page. So it's the --

11:56:22 13 A. Yeah.

11:56:22 14 Q. -- slide entitled "Sourcing Top Talent."

11:56:25 15 Do you see that?

11:56:25 16 A. Yes.

11:56:26 17 Q. The first bullet is, "Focus on," quote,

11:56:28 18 "passive," closed quote, "talent."

11:56:30 19 Is that the same way in which you've been

11:56:33 20 using the term "passive"?

11:56:36 21 A. Yes. Passive are individuals that might not

11:56:42 22 necessarily be actively looking in terms of applying,

11:56:46 23 but are individuals that we either meet along the way

11:56:52 24 or contact or pursue.

11:56:55 25 Q. And it says, "Focus on passive talent."

11:56:58 1 What does that mean? What is that referring
11:57:00 2 to?

11:57:00 3 A. You know, once again, I mean, Jeff would have
11:57:03 4 been the contributor of this. This talent target is
11:57:07 5 something that he developed. So I don't --

11:57:13 6 Q. Was there a focus in March 2005 in seeking out
11:57:19 7 passive talent?

11:57:20 8 A. So in terms of the business context, in 2005
11:57:25 9 we were building out an enterprise portion of our
11:57:30 10 company and we were changing our business model, and we
11:57:33 11 were actively looking to go more direct in terms of our
11:57:39 12 routes to market and how we were actually selling our
11:57:42 13 products. And so there were a lot of new capabilities
11:57:45 14 and skill sets that we needed to attract during that
11:57:47 15 period of time.

11:57:48 16 So our dependence upon growing directly our
11:57:51 17 own talent base wasn't going to suffice, given the
11:57:54 18 shifts in the business, and we were at that point in
11:57:56 19 time actively looking to gain incremental enterprise
11:58:02 20 capabilities from, you know, established enterprise
11:58:06 21 companies.

11:58:07 22 Q. And one way to do that is to seek out passive
11:58:11 23 talent?

11:58:12 24 A. Correct.

11:58:13 25 Q. The second bullet point says, "Why passive

11:58:18 1 talent?" And under that it says, "Top performers tend
11:58:22 2 to be entrenched," quotes, "heads down," closed quote,
11:58:25 3 "maybe," quote, "willing to listen," closed quote, "if
11:58:29 4 the right opportunity is presented."

11:58:31 5 Do you see that?

11:58:31 6 A. Correct.

11:58:32 7 Q. And is this saying that the top performers at
11:58:35 8 other companies -- well, what does it mean, that top
11:58:39 9 performers tend to be entrenched?

11:58:42 10 A. Our own belief has always been that, including
11:58:44 11 our own employees, if they're actively engaged and
11:58:48 12 they've got an opportunity to grow, they're not
11:58:51 13 necessarily actively looking for jobs, because they're
11:58:54 14 super busy and so they don't necessarily have the need
11:58:58 15 to be applying directly to jobs.

11:59:02 16 Q. And so --

11:59:06 17 A. However, if the right job is brought to their
11:59:08 18 attention, they might very well be willing to listen
11:59:11 19 and be interested.

11:59:12 20 Q. And so the way to get to that -- the only way
11:59:13 21 to get to these entrenched top performers is to cold
11:59:18 22 call, broadly defined; is that right?

11:59:19 23 MR. KIERNAN: Objection. Misstates the
11:59:21 24 testimony.

11:59:21 25 MR. CRAMER: Just asking the question.

11:59:23 1 THE WITNESS: I don't think that's the only
11:59:24 2 way.

11:59:24 3 BY MR. CRAMER:

11:59:24 4 Q. How else would you get to a passive candidate?

11:59:27 5 A. It could be that we have a recruitment agency
11:59:29 6 working for us. It could be that a passive candidate
11:59:32 7 meets one of our recruiters along the way and ends up
11:59:35 8 becoming interested in opportunity. It could be a
11:59:37 9 passive candidate as an employee referral.

11:59:42 10 So there's -- you know, there's lots of ways.
11:59:44 11 But certainly one way is to contact them directly, yes.

11:59:46 12 Q. Please turn to the slide that says "Rejected
11:59:55 13 offer overview." In one, two, three, four --
12:00:01 14 unfortunately these are not numbered, but I think it's
12:00:03 15 page 7 of the document.

12:00:04 16 Do you see that?

12:00:04 17 A. Yes.

12:00:05 18 Q. It says -- the first bullet -- bullet is, "[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] ."

12:00:15 21 Do you see that?

12:00:15 22 A. Yes.

12:00:15 23 Q. What's that referring to?

12:00:17 24 MR. KIERNAN: Objection to the extent it calls
12:00:19 25 for speculation.

01:39:58 1

[REDACTED]

01:40:00 2

Do you see that?

01:40:01 3

A. Yes.

01:40:01 4

Q. Do you know what that's referring to?

01:40:03 5

A. Well, I didn't -- I don't -- I don't know. I

01:40:06 6

can speculate --

01:40:07 7

Q. What -- when it --

01:40:08 8

A. -- but I don't know.

01:40:09 9

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

01:40:25 14

Q. Okay. And then Ms. Swarthout responds, at the

01:40:29 15

e-mail at the top of the second page of this document,

01:40:31 16

"Bernadette, this is interesting. When I looked at the

01:40:33 17

list [REDACTED] name jumped out. We did not hire her as a

01:40:37 18

[REDACTED] but as an [REDACTED] Could you review

01:40:41 19

this and also check if others are in the right

01:40:43 20

classifications."

01:40:43 21

Do you see that?

01:40:44 22

A. Yes.

01:40:44 23

Q. What's a [REDACTED]?

01:40:46 24

A. So it is a job level for a compensation

01:40:51 25

analyst.

01:40:52 1 Q. And an [REDACTED] is another job level?

01:40:54 2 A. That's right.

01:40:55 3 Q. And each of those job levels respectively have
01:40:57 4 their own salary ranges, is that right, associated with
01:41:00 5 them?

01:41:00 6 A. Correct.

01:41:01 7 Q. Okay. And part of what was being studied here
01:41:04 8 was whether or not individuals who had particular job
01:41:08 9 categories had salaries that fell within the min/max
01:41:14 10 ranges for those categories?

01:41:15 11 A. I don't know what sparked Ellen's desire to
01:41:18 12 have this data. All I know is the e-mail that she sent
01:41:22 13 to me asking about the process.

01:41:25 14 Q. Okay. But the question was, there was a study
01:41:29 15 done to see -- at some point in 2004, to see whether or
01:41:33 16 not people remember being compensated within the min
01:41:37 17 and max ranges for particular job categories; correct?

01:41:41 18 A. It looks like what she requested were people
01:41:43 19 who were over the maximum of the range.

01:41:45 20 Q. Right. And she found out that there were only
01:41:49 21 [REDACTED] new hires that were over the maximum; is
01:41:53 22 that right?

01:41:53 23 MR. KIERNAN: Objection with respect to
01:41:55 24 completion. Lacks foundation.

01:42:01 25 MR. CRAMER: Okay.

01:42:01 1 MR. KIERNAN: Misstates the document.

01:42:03 2 BY MR. CRAMER:

01:42:03 3 Q. Ms. Arriada says, [REDACTED]

[REDACTED] [REDACTED]."

01:42:10 5 Right?

01:42:10 6 A. Yes.

01:42:10 7 Q. And so what did -- I'm just trying to

01:42:13 8 understand, from an HR perspective, that means that [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

01:42:26 12 A. It appears to be so, yes.

01:42:28 13 Q. Okay. And then if you turn to the first page,

01:42:31 14 Ms. Arriada is reporting back to Ms. Swarthout that it

01:42:38 15 turns out that a couple were on that list in error; is

01:42:41 16 that right?

01:42:42 17 A. It appears to be that.

01:42:43 18 Q. Right. And that they had the wrong job

01:42:46 19 category in the software; is that right?

01:42:48 20 A. That appears what she's indicated, yes.

01:42:50 21 Q. Okay. It says, "The field that the report was

01:42:53 22 pulling from was showing the job that happened to be

01:42:55 23 over the salary range, when in fact the real job was

01:42:59 24 not over the max."

01:43:00 25 Right?

01:43:00 1 A. Mm-hmm.

01:43:01 2 Q. Okay. So in fact, there were [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED] is that right?

01:43:13 5 Yes?

01:43:13 6 A. Right.

01:43:13 7 Q. Okay. And then -- so you were -- your --

01:43:19 8 Ms. Swarthout forwards this to you.

01:43:22 9 Do you know why she forwarded it to you?

01:43:23 10 A. My role of global talent, I suppose she
01:43:27 11 assumed that I knew all of the [REDACTED] people that were
01:43:32 12 hired and exactly what job code that they should be in,
01:43:35 13 which would be pretty difficult for someone to know --

01:43:39 14 Q. Sure.

01:43:40 15 A. -- all [REDACTED] hires and the [REDACTED] specifically that
01:43:44 16 were over the job code.

01:43:45 17 Q. Right.

01:43:45 18 So she says to you, "Did you know of all of
01:43:48 19 these that were hired over the max? [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]"

01:43:58 23 Do you see that?

01:43:58 24 A. Mm-hmm.

01:43:59 25 Q. Do you know what she meant by "[REDACTED]"

01:47:06 1 Do you see that?

01:47:06 2 A. Correct, yes.

01:47:07 3 Q. So you're saying your team includes the
01:47:08 4 recruiters at this point?

01:47:10 5 A. Yes.

01:47:11 6 Q. Okay. And HR consulting, that's part of HR?

01:47:18 7 A. That is, yes.

01:47:19 8 Q. Right?

01:47:19 9 So you're saying you need to think about the
01:47:24 10 consultation going on between the recruiters and
01:47:27 11 consulting, to talk about when and if people are being
01:47:31 12 outside -- hired outside the salary range for a
01:47:34 13 category?

01:47:34 14 A. Well, I don't know if specifically I was
01:47:37 15 saying that. I'm saying just in general the
01:47:40 16 partnership between the recruiters and HR consulting,
01:47:42 17 is what I see here.

01:47:43 18 Q. And one of the things you say is that you need
01:47:49 19 to make sure or she needs to make sure -- Ms. Swarthout
01:47:53 20 needs to make sure that if people are being hired
01:47:55 21 outside the salary range for a particular job category,
01:47:58 22 that your team, the recruiters and HR consulting, are
01:48:02 23 being brought into the process? Is that part of what
01:48:04 24 you're saying?

01:48:05 25 MR. KIERNAN: Objection. Misstates the

01:48:07 1 testimony.

01:48:07 2 THE WITNESS: I'm not saying that.

01:48:09 3 What I'm reading is that we were to -- we
01:48:13 4 want -- you know, I expressed the desire to meet with
01:48:18 5 Ellen and discuss the situation. So that's what this
01:48:21 6 says.

01:48:21 7 BY MR. CRAMER:

01:48:21 8 Q. And then you said, "especially considering
01:48:23 9 this could impact internal equity."

01:48:25 10 Do you see that?

01:48:25 11 A. Yes.

01:48:25 12 Q. What does that mean?

01:48:27 13 A. Internal equity is just parity between
01:48:31 14 candidates and employees. So the difference in pay
01:48:33 15 between employees that are already part of our team
01:48:36 16 versus employees that we're hiring into the company.

01:48:39 17 Q. So there's some concept called "internal
01:48:42 18 equity" whereby if you hire an employee outside the
01:48:46 19 range for a particular job category, that could create
01:48:50 20 some issues with equity within the company?

01:48:53 21 A. That's not really what the concept of internal
01:48:55 22 equity is.

01:48:55 23 Q. All right. Explain it to me.

01:48:57 24 A. So internal equity is about looking at skills
01:49:01 25 and capabilities which are similar. There's a lot of

01:49:05 1 factors that come into consideration, but skills and
01:49:08 2 capabilities that are similar. Is their eventual
01:49:12 3 earning potential similar within a range? It's not to
01:49:14 4 say that they are paid the exact same, but are they at
01:49:17 5 least within the same range?

01:49:19 6 So this would be indicating of how do we
01:49:21 7 ensure that people are put in the right range in -- you
01:49:26 8 know, based on their job.

01:49:27 9 Q. Did you subsequently talk -- you said in the
01:49:34 10 last paragraph, "Look forward to our discussion, and my
01:49:37 11 thanks for being a champion to this happening."

01:49:39 12 Did you in fact have a discussion with
01:49:41 13 Ms. Swarthout about these issues?

01:49:44 14 A. If I did, I don't recall.

01:49:45 15 Q. Okay. It's fair to say that in July 2004 you
01:50:07 16 considered recruiters part of your team in HR?

01:50:09 17 A. That was a key part of my responsibilities,
01:50:12 18 yes.

01:50:12 19 Q. Why -- you said, in the second sentence of the
01:50:19 20 first paragraph, "especially considering this could
01:50:23 21 impact internal equity."

01:50:25 22 Was the "this" you were referring to hiring
01:50:27 23 people outside the salary range?

01:50:29 24 A. Yes.

01:50:30 25 Q. Okay. So that was a concern of yours in HR,

01:54:15 1 found that problematic at all, when there's substantial
01:54:20 2 variability between employee compensation within the
01:54:23 3 same job category?

01:54:24 4 A. No.

01:54:25 5 Q. Has it ever come to your attention that there
01:54:29 6 were morale problems caused by variability in salary
01:54:34 7 for a similar job category?

01:54:36 8 A. No.

01:54:36 9 Q. I think I asked a little bit about this
01:54:52 10 before, but let me ask it more broadly.

01:54:55 11 What steps, if any, does Adobe take to ensure
01:54:58 12 that salaries for particular job categories are
01:55:02 13 generally kept within that salary range for that
01:55:05 14 category?

01:55:06 15 A. What do you mean, within the salary range for
01:55:09 16 that category?

01:55:09 17 Q. Well, I believe you testified that each job
01:55:12 18 title or category has its own min and max base salary
01:55:15 19 range?

01:55:15 20 A. Right.

01:55:16 21 Q. What steps does Adobe take to make sure
01:55:19 22 that -- if it does at all, that the salaries for people
01:55:23 23 within a category fall within the min/max range?

01:55:27 24 A. So I would say we don't have a lot of steps
01:55:32 25 that we take. We have salary ranges, and annually,

01:55:36 1 when we do our review process, we look at how many
01:55:39 2 individuals are below the minimum of that salary range
01:55:43 3 or above, and we have different practices, depending.

01:55:46 4 So if -- you know, if they're below, then we
01:55:49 5 look at it one way, and if they're above, we look at it
01:55:53 6 another.

01:55:53 7 Q. And if it's below, what do you do?

01:55:56 8 A. [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

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[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

01:58:00 1 would you give a spot bonus?

01:58:02 2 A. [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

01:58:37 14 MR. CRAMER: I'm going to mark the next

01:58:38 15 document as Plaintiffs' Exhibit 215.

01:58:43 16 (PLAINTIFFS' EXHIBIT 215 MARKED.)

01:58:54 17 MR. CRAMER: For the record, this bears the

01:58:56 18 Bates range ADOBE_028449 through 8452, and there's a

01:59:06 19 cover e-mail and then an attachment. I really only

01:59:09 20 want to ask about the cover e-mail.

01:59:11 21 The cover e-mail is an e-mail from Christy

01:59:14 22 Brandt, dated Thursday, November 10, 2005, and it's

01:59:18 23 sent to Jeff Vijungco. And it is cc'd to Ms. Morris

01:59:22 24 and Dave Story.

01:59:36 25 BY MR. CRAMER:

02:22:54 1 percent.

02:22:54 2 Do you see that?

02:22:54 3 A. Yes.

02:22:55 4 Q. So what is it that he -- what does that mean,
02:23:00 5 that he's hearing that other companies are budgeting
02:23:03 6 base salary increases of 3 to 4 percent?

02:23:05 7 A. What he's sharing is they are expecting that
02:23:08 8 their operating expenses associated with base salary
02:23:11 9 increases would likely be in the range of 3 to 4
02:23:14 10 percent.

02:23:14 11 Q. Okay. And here -- then you have a list of
02:23:19 12 bullet points, and you say, "Here is where we both came
02:23:21 13 out."

02:23:21 14 The first bullet point is, "We want to ensure
02:23:24 15 that we are competitive."

02:23:25 16 What did you mean by that?

02:23:26 17 A. That despite what other companies are doing,
02:23:28 18 we want to be market competitive.

02:23:31 19 Q. And what does that mean?

02:23:32 20 A. Market competitive for us is we have a paid
02:23:35 21 position of the 65th percentile. So we would be
02:23:39 22 looking to be competitive with our pay practices.

02:23:41 23 Q. What does "65th percentile" mean?

02:23:45 24 A. Where we benchmark the midpoint of our salary
02:23:48 25 range, being at the 65th percentile of market data.

02:23:51 1 Q. Based on Radford?

02:23:52 2 A. That's right.

02:23:53 3 Q. And you try to maintain the salary range at
02:23:57 4 the 65th percentile over time?

02:23:59 5 MR. KIERNAN: Wait. Object.

02:24:01 6 THE WITNESS: The midpoint.

02:24:01 7 BY MR. CRAMER:

02:24:01 8 Q. The midpoint. You try to maintain the
02:24:05 9 midpoint at the 65th percentile?

02:24:06 10 A. On or around the 65th percentile.

02:24:08 11 Q. And you try to maintain that midpoint over
02:24:10 12 time; is that right?

02:24:12 13 A. To the extent that we can at the 65th
02:24:15 14 percentile.

02:24:15 15 Q. So that's a goal of Adobe's?

02:24:17 16 A. It's a desire. It's our philosophy, to pay on
02:24:21 17 or around the 65th percentile in terms of where the
02:24:24 18 midpoint is established, yes.

02:24:25 19 Q. And that's based on the Radford categories?

02:24:30 20 A. That's based on Radford job levels, yes.

02:24:35 21 Q. So Radford has a set of job levels with salary
02:24:40 22 ranges associated with them; is that right?

02:24:41 23 A. Yes. The salary ranges are our salary ranges,
02:24:47 24 not Radford salary ranges.

02:24:49 25 Q. And what Adobe attempts to do is to have

02:24:52 1 Adobe's salary ranges associated with those job
02:24:56 2 categories pinpointed at the 65th percentile of the
02:24:59 3 Radford range.

02:25:00 4 MR. KIERNAN: Hang on.

02:25:00 5 BY MR. CRAMER:

02:25:00 6 Q. Is that right?

02:25:02 7 MR. KIERNAN: Misstates her testimony.

02:25:03 8 THE WITNESS: Radford is one of the main
02:25:07 9 survey sources that they use to determine what the
02:25:10 10 market 65th percentile is. It's not the only source of
02:25:15 11 data that we use.

02:25:16 12 BY MR. CRAMER:

02:25:16 13 Q. What other sources of data do you use?

02:25:18 14 A. So Towers Perrin produces a survey we use.
02:25:24 15 Hewitt in some markets. We've used Mercer in the past
02:25:28 16 in markets. There's been a lot of consolidation in
02:25:31 17 that entire industry, but nonetheless, it's not just
02:25:34 18 Radford's salary data that we use. We use other salary
02:25:38 19 survey sources too.

02:25:40 20 Q. You take various different salary sources for
02:25:43 21 particular job categories, and you set as your goal, is
02:25:46 22 it fair to say, that the midpoint of the Adobe salary
02:25:52 23 range falls at the 65th percentile, based upon this
02:25:58 24 market data?

02:25:59 25 A. On overall market data.

02:26:01 1 Q. Okay. What is AIP?

02:26:06 2 A. Annual incentive plan.

02:26:08 3 Q. And what is that?

02:26:09 4 A. Annual incentive plan is an annual incentive
02:26:16 5 based on company profitability and those that are
02:26:19 6 eligible to participate in that plan.

02:26:20 7 Q. Okay. Thank you. You can put that document
02:26:24 8 aside.

02:26:48 9 MR. KIERNAN: Eric is a very nice guy, but he
02:26:52 10 forgot to tell you that if you ever need a break, yeah,
02:26:54 11 you can take one.

02:26:56 12 THE WITNESS: Thank you.

02:26:56 13 MR. CRAMER: This is not an inquisition.

02:26:59 14 MR. KIERNAN: As I say, a marathon.

02:27:00 15 MR. CRAMER: Yeah, you are free to take a
02:27:02 16 break at any time.

02:27:02 17 MR. KIERNAN: But you can keep plowing
02:27:04 18 through, too.

02:27:07 19 MR. CRAMER: Really, let me know if you need a
02:27:10 20 break.

02:27:10 21 So I'll mark the next document as Plaintiffs'
02:27:14 22 Exhibit 218.

02:27:14 23 (PLAINTIFFS' EXHIBIT 218 MARKED.)

02:27:29 24 MR. CRAMER: Plaintiffs' Exhibit 218 is a
02:27:31 25 two-page e-mail bearing the Bates range ADOBE_010235

03:34:12 1 BY MR. CRAMER:

03:34:12 2 Q. Plaintiffs' Exhibit 225 is a one-page document
03:34:33 3 bearing the Bates range 176APPLE002145.

03:34:39 4 MS. BROWN: And again, I make the same
03:34:40 5 objection. This may actually be a document that we
03:34:44 6 designated, but without any advanced warning, I can't
03:34:47 7 verify that.

03:34:47 8 MR. CRAMER: Okay. It's also an Adobe
03:34:50 9 document.

03:34:50 10 MS. BROWN: No, it's a document that was
03:34:52 11 produced by Apple, and I don't see Ms. Morris's name on
03:34:55 12 the document at all.

03:34:56 13 MR. CRAMER: Yeah, the e-mail is from
03:34:57 14 Theresa -- the second e-mail is from Theresa Townsley
03:34:59 15 to Donna Morris.

03:35:00 16 MR. KIERNAN: Why don't we deal with this at a
03:35:03 17 break.

03:35:03 18 MR. CRAMER: Okay.

03:35:03 19 MR. KIERNAN: I mean, we've got your
03:35:05 20 objection, but let's just deal with it at the break.

03:35:07 21 MR. CRAMER: Fair enough.

03:35:07 22 BY MR. CRAMER:

03:35:07 23 Q. So there's an e-mail from Theresa Townsley to
03:35:11 24 Donna Morris, dated May 27th, 2005.

03:35:14 25 Do you see that?

03:35:15 1 A. Yes.

03:35:15 2 Q. Do you remember seeing this e-mail?

03:35:17 3 A. Yes, I do.

03:35:17 4 Q. And this was cc'd to Shantanu Narayen, Bruce

03:35:25 5 Chizen and Gloria Stinson, and the subject is

03:35:28 6 "Recruitment of Apple Employees."

03:35:29 7 Do you see that?

03:35:30 8 A. Yes.

03:35:30 9 Q. And Ms. Townsley says to you, "Hi, Donna.

03:35:35 10 Bruce and Steve Jobs have an agreement that we are not

03:35:37 11 to solicit any," all caps, "Apple employees, and vice

03:35:40 12 versa. Please ensure all your worldwide recruiters

03:35:44 13 know that we are not to solicit any Apple employee. I

03:35:47 14 know Jerry is soliciting one now, so he'll need to back

03:35:51 15 off. Please help him with how to do that. Let me know

03:35:55 16 if you have any questions."

03:35:56 17 Did I read that correctly?

03:35:58 18 A. Yes.

03:35:58 19 Q. So this is the e-mail that the head of HR sent

03:36:01 20 to you on May 27th, 2005; is that right?

03:36:03 21 A. That's right.

03:36:04 22 Q. And she's explaining to you that there was an

03:36:08 23 agreement between Bruce Chizen and Steve Jobs; right?

03:36:11 24 A. Yes.

03:36:12 25 Q. And that agreement said that Adobe was not

03:36:16 1 allowed to solicit any Apple employees; right?

03:36:19 2 A. Yes.

03:36:19 3 Q. And that Apple was not allowed to solicit any
03:36:23 4 Adobe employees; right?

03:36:24 5 A. Correct.

03:36:25 6 Q. And you were asked by Ms. Townsley to ensure
03:36:29 7 all of your worldwide recruiters to make sure not to
03:36:33 8 solicit any Apple employee; is that right?

03:36:35 9 A. Correct.

03:36:36 10 Q. Did you do that?

03:36:37 11 A. Yes.

03:36:39 12 Q. And Ms. Townsley says, "I know Jerry is
03:36:42 13 soliciting one now, so he'll need to back off."

03:36:46 14 Did you tell Jerry to back off his soliciting
03:36:49 15 of the Apple employee who he was -- referred to here?

03:36:54 16 A. I don't know who specifically they were
03:36:56 17 referring to, other than showing the one document that
03:36:58 18 had an individual's name on it.

03:37:01 19 Q. "Jerry" here is Jerry Vijungco?

03:37:05 20 A. No, that's Jerry Sastri.

03:37:06 21 Q. I'm sorry. Jerry Sastri.

03:37:08 22 So the way you're interpreting this is the --
03:37:14 23 that in the e-mail that Mr. Jobs sent to Mr. Chizen, he
03:37:17 24 had attached the e-mail from Mr. Sastri to the Apple
03:37:22 25 employee?

03:37:22 1 A. Right.

03:37:23 2 Q. Okay. And then Ms. Townsley says to you,

03:37:32 3 "Please help him with how to do that."

03:37:34 4 Do you see that?

03:37:34 5 A. Right.

03:37:35 6 Q. Did you do that? Did you follow

03:37:36 7 Ms. Townsley's direction?

03:37:37 8 A. I'm sure I told Jerry that he needed to back

03:37:42 9 off.

03:37:43 10 Q. Okay. And then the top of this e-mail is from

03:37:51 11 Bruce Chizen to Steve Jobs.

03:37:52 12 Do you see that?

03:37:53 13 A. Yes.

03:37:53 14 Q. So it's fair to say that Mr. Chizen, who was

03:38:00 15 cc'd on the e-mail from Ms. Townsley to you, forwarded

03:38:03 16 that to Mr. Jobs; is that right?

03:38:05 17 A. It would appear.

03:38:07 18 Q. And he says, "FYI"; right?

03:38:09 19 A. Yes.

03:38:10 20 Q. So Mr. Chizen is basically saying, look, we're

03:38:14 21 executing on the understanding that we have between

03:38:16 22 Mr. Chizen -- between our two companies; is that fair

03:38:19 23 to say?

03:38:19 24 MS. BROWN: Objection. Lacks foundation.

03:38:20 25 MR. KIERNAN: Argumentative.

05:58:39 1 your general counsel in which you received briefing
05:58:41 2 regarding the meaning of the antitrust laws?

05:58:44 3 A. A number of times.

05:58:45 4 Q. Were there other people present?

05:58:46 5 A. For some of those meetings, yes.

05:58:52 6 MR. CRAMER: All right. That's all the
05:58:52 7 questions I have. Thanks.

05:58:56 8 Anybody else?

05:58:59 9 All right. That's it. Go off the record.

05:59:01 10 THE VIDEOGRAPHER: This is the end of video 4
05:59:03 11 and conclusion of today's proceedings. The time is
05:59:06 12 5:59 p.m. We're off the record.

13 (Deposition adjourned at 5:59 p.m.)

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REPORTER'S CERTIFICATE

I, Anne Torreano, Certified Shorthand Reporter licensed in the State of California, License No. 10520, hereby certify that the deponent was by me first duly sworn, and the foregoing testimony was reported by me and was thereafter transcribed with computer-aided transcription; that the foregoing is a full, complete, and true record of said proceedings.

I further certify that I am not of counsel or attorney for either or any of the parties in the foregoing proceeding and caption named or in any way interested in the outcome of the cause in said caption.

The dismantling, unsealing, or unbinding of the original transcript will render the reporter's certificates null and void.

In witness whereof, I have subscribed my name this 31st day of August, 2012.

☒ Reading and Signing was requested.

☐ Reading and Signing was waived.

☐ Reading and Signing was not requested.

ANNE M. TORREANO, CSR No. 10520